



Planning Department

TOWN OF ACTON
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MEMORANDUM

To: Zoning Board of Appeals **Date:** April 29, 2016
From: Kristen Guichard, AICP, Assistant Town Planner
Subject: Special Permit #16-02
9 Willow Street – Restoration of a Non-conforming Structure (Zoning Bylaw Section 8.3.4)

Location: 9 Willow Street

Map/Parcel: F2B-41

Petitioner/Owner: Jean Panetta, Trustee of Attenap Realty Trust

Zoning: West Acton Village (WAV), Affordable Housing Overlay District B and
Flood Plain Overlay District

Hearing Date: May 2, 2016

Decision Due: July 31, 2016

Background:

Mr. Alex Para, on behalf of Jean V. Panetta, requests a Special Permit under Section 8.3.4 to allow for the reconstruction of a non-conforming building which was damaged as a result of excess snow load in the winter of 2014/2015. The damaged structure is non-conforming due to the side yard setback and its location within the 100-year flood plain. The damaged structure currently sits +/-2.2 feet from the property line where 20 feet is required. It was constructed before FEMA in 2014 included its location within the 100-year flood plain, and Town Meeting thereafter included the location in the Flood Plain Overlay Zoning District. The Applicant proposes to demolish the non-conforming, damaged structure and to construct a new 3,200 square foot building on the same foot print with the same +/-2.2 foot set-back.

General Requirements of Bylaw Section 8.3.4 (Non-Conforming Structures):

1. The Application appears to meet the following requirements of Zoning Bylaw Section 8.3.4 to apply for a Special Permit:
 - a. The structure must be damaged by fire, flood or similar disaster to an extent greater than 50% of its fair market value before it was damaged.

- b. Applications must be filed within two years from the date on which the damage occurred.
2. Zoning Bylaw Section 8.3.4 requires the Board to find that:
 - a. Such rebuilding or reconstruction will not be detrimental to the neighborhood, and
 - b. To the extent possible the structure will be rebuilt or reconstructed in conformity with the dimensional requirements of this Bylaw.¹

Flood Plain Overlay District:

3. The purpose of the Flood Plain Overlay Zoning District is to maintain the Town's eligibility in the National Flood Insurance Program by adopting floodplain management regulations that meet regulations set forth in 44 CFR 60.3. The Flood Plain delineation was redrawn in 2014 which the Town was required to adopt as its overlay zoning district to be eligible in said program.

Other Considerations:

1. The closest building on the adjacent lot, 13 Willow Street, is located approximately +/- 85 away.
2. This site and the uses on the site are pre-existing non-conforming. Non-conformities range from prohibited uses as an open air salvage/storage yard, building setbacks and buildings within the Flood Plain Overlay District without a Special Permit. In granting the Special Permit the Board could consider requiring reasonable efforts be made to begin the clean-up of the site.
3. Reconstruction of this structure will require Conservation Commission approval under its separate and independent jurisdiction under the Wetlands Protection Act and Chapter F of the Town Bylaws. Please see the Natural Resource Director's comments dated 4/28/16.
4. Bylaw Section 10.3.6.9, Special Permit Conditions, gives the Board the authority to require a sidewalk along the entire frontage of a lot. In lieu of requiring the sidewalk outright, the Planning and Engineering Department recommend exploration of a realignment of the intersection and streetscape improvement at Willow and Central Street as a joint effort with the Applicant. Attached is a conceptual design created by the Engineering Department. The realignment would require a land swap between the Town of Acton and the Applicant. The land acquisition and disposition would require a TM vote. Please see draft letter of agreement provided by the Applicant's attorney.

Recommendations:

1. A special permit under Bylaw Section 8.3.4 can accommodate both dimensional regulations with respect to the non-conforming setback as well as the non-conforming building location within the Floodway Fringe. Where the Bylaw requires that "to the extent possible the structure will be rebuilt or reconstructed in conformity with the dimensional requirements of this Bylaw", the method for construction of the new building and compensatory flood storage techniques should meet the requirements of Bylaw Section 4.1.8.1 and its subsections.

¹ In addition, the Board must make the mandatory Special Permit findings of Section 10.3.5.

The Applicant contends the area currently shown in the Flood Plain has not flooded while owning the property since the 1970s. They have noted their intentions to request a change of flood zone determination on their property. Nevertheless, the building in question currently sits within the existing Flood Plain and should comply with Bylaw Section 4.1.8.1.

2. The Planning Department received a letter from the Applicant's engineer on 4/28/16 addressing the requirements of Section 4.1.8.1. The Applicant explains their intent for the building to be flood proofed and has indicated they will provide compensatory flood storage equal to any additional increase in displacement beyond the pre-existing non-conforming building's displacement. The Planning Department believes this meets the requirements of Section 4.1.8.1 with the appropriate conditions in the permit.
3. The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.3.4 and 10.3.5. The Planning Department strongly recommends the following conditions a through j:

The Planning Department is confident in the Engineering and Building Department's capabilities to confirm commercial building code compliance for flood proofing and Bylaw compliance with compensatory flood storage and displacement requirements of the Bylaw. If the Applicant successfully petitions to FEMA for a change in the Flood Zone prior to construction of the building, then the requirements of Section 4.1.8.1 would no longer be applicable². Therefore the Planning Department recommends the following conditions:

- a. Prior to issuance of a building permit the Applicant shall:
 - i. Submit certified calculations, and subsequent certified plans if necessary for compensatory flood storage, by a registered engineer to prove compliance with Bylaw Section 4.1.8.1(b) and,
 - ii. Submit certified architectural building design plans that meet the Massachusetts Commercial Building Code (1612.4, ASCE 24) for flood proofing.

OR

- iii. Provide to the Planning Department, as required by FEMA, evidence of a map change by FEMA to the Flood Zone Determination showing the building outside the Flood Plain.

In Addition, if the special permit is granted, the decision should include findings, conditions and limitations as follows:

- b. Prior to issuance of a building permit, the Applicant shall construct a sidewalk along the street frontage of the property or, as offered, make a payment to the Acton Sidewalk Fund in the amount of \$17,427.50 (according to the established contribution calculation of \$50/linear feet of frontage), or participate in a land swap with the Town of Acton to realign the intersection of Willow and Central Streets.

² The Applicant must submit this special permit request within two years of the structural damage. Including this condition provides the Applicant with sufficient additional time to petition FEMA for a map change and await the results.

- c. That the Petitioner must record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the site.
- d. That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full before the issuance of a building permit.
- e. That the special permit conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw.
- f. That the Town of Acton may elect to enforce compliance with the special permit using any and all powers available to it under the law.
- i. That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision.
- j. That the Board reserves its right and power to modify or amend the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.

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